

MCDONALD CARANO WILSON LLP
KAARAN E. THOMAS (NV Bar No. 7193)
100 W. Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505-2670
Telephone: (775) 788-2000
Facsimile: (775) 788-2020
Email: kthomas@mcdonaldcarano.com

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Attorneys for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Case No. 10-27855-BAM

AMERICAN PACIFIC FINANCIAL
CORPORATION,

Chapter 11

Debtor and Debtor in Possession,

**FIRST AMENDED PLAN OF LIQUIDATION OF AMERICAN PACIFIC FINANCIAL
CORPORATION, DEBTOR AND DEBTOR IN POSSESSION**

Dated: April 1, 2011

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INTRODUCTION

American Pacific Financial Corporation (“Debtor”), as debtor and debtor in possession in the above-captioned Chapter 11 Case, hereby proposes the following Plan of Liquidation for the resolution of outstanding Claims and Interests against the Debtor. Capitalized terms used herein shall have the meanings ascribed to such terms in Article I.B. of this Plan. The Debtor is a proponent of this Plan within the meaning of Section 1129 of the Title 11 of the United States Code Sections 101, *et. seq.* (the “Bankruptcy Code”).

Under Bankruptcy Code Section 1125 (b) a vote to accept or reject this Plan cannot be solicited from a Claimholder or Interest holder until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Claimholders and Interest holders. The Disclosure Statement for this case was approved on , 2011 and has been distributed simultaneously with this Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtor’s history, business and Plan, a summary and analysis of the Plan and related matters that affect the treatment of the Claims and Interests of the Debtor. ALL CLAIMHOLDERS AND INTERESTHOLDERS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT AND RELATED SOLICITATION MATERIALS IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

Subject to certain restrictions and requirements set forth in Bankruptcy Code Section 1127 and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article X. F. of the Plan, the Debtor expressly reserves its respective rights to alter, amend, modify, revoke or withdraw this Plan with respect to such Debtor, one or more times, prior to this Plan’s substantial consummation.

1 **ARTICLE I.**

2 **DEFINITIONS, RULES OF INTERPRETATION AND COMPUTATION OF TIME**

3 **A. Scope of Definitions**

4 For purposes of this Plan, except as expressly provided or unless the context otherwise
5 requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in
6 Article I.B. of this Plan. Any term used in this Plan that is not defined herein, but is defined in the
7 Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the
8 Bankruptcy Code or the Bankruptcy Rules.
9

10 **B. Definitions**

11 **“Administrative Claim”** means a Claim for any cost or expense of administration of the
12 Chapter 11 Case allowed under Sections 503(b), 507(b) or 546(c)(2) of the Bankruptcy Code and
13 entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation:
14 (a) fees payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred in
15 the ordinary course of the Debtor’s business; (c) actual and necessary costs and expenses of
16 preserving the Debtor’s Estate or administering the Chapter 11 Case; (d) DIP Claims; and (e) all
17 Professional Fees to the extent allowed by Final Order under Sections 330, 331, or 503 of the
18 Bankruptcy Code.
19

20 **“Administrative Claims Bar Date”** means the deadline for filing proofs or requests for
21 payment of Administrative Claims, which shall be forty-five (45) days after the Effective Date,
22 unless otherwise ordered by the Bankruptcy Court, except with respect to Professional Claims.
23

24 **“Affiliate”** has the meaning given such term by Section 101(2) of the Bankruptcy Code.

25 **“Allowed ... Claim”** or **“Allowed ... Interest”** means, respectively, except as otherwise
26 allowed or provided for in this Plan, a Claim or an Interest, proof of which was timely and properly
27 filed or, if no proof of claim or proof of interest was filed, which has been or hereafter is listed by
28

1 the Debtor in its Schedules as liquidated in amount and not disputed or contingent, and in either
2 case, as to which no objection to the allowance thereof has been interposed on or before the later of:
3 (a) 45 days after the Effective Date; or (b) such other applicable period of limitation as may be
4 fixed or extended by the Bankruptcy Court, or as to which any objection has been determined by a
5 Final Order to the extent such objection is determined in favor of the respective holder.
6

7 **“APFC”** means American Pacific Financial Corporation, a California corporation, Debtor
8 and Debtor in Possession.

9 **“Asset Sale”** means, collectively, the sale or sales of the Debtor’s assets whether
10 substantially in their entirety or in several lots.

11 **“Avoidance Actins”** means Causes of Action against Persons arising under any of Sections
12 510, 547, 548, 549, 550 and 551 of the Bankruptcy Code, or under similar or related state or federal
13 statutes and common law, including fraudulent transfer laws, whether or not litigation has been
14 commenced as of the Confirmation Date to prosecute such Avoidance Claims.
15

16 **“Ballot”** means each of the ballot forms that are distributed with the Disclosure Statement
17 to Claimholders or Interestholders included in Classes that are Impaired under this Plan and entitled
18 to vote to accept or reject this Plan.

19 **“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as amended and codified
20 in title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as in effect on the date hereof.
21

22 **“Bankruptcy Court”** means the United States Bankruptcy Court for the District of Nevada
23 or such other court as may have jurisdiction over the Chapter 11 Case.

24 **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure and the Official
25 Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to
26 the Chapter 11 Case or proceedings therein, and the Local Rules of the Bankruptcy Court, as
27 applicable to the Chapter 11 Case or proceedings therein, as the case may be.
28

1 **“Bar Date”** means the deadline set by the Bankruptcy Court pursuant to the Bar Date Order
2 or other Final Order for filing proofs of claim in the Chapter 11 Case.

3 **“Board of Advisors”**. The Board of Advisors initially shall be composed of two persons
4 selected by a majority vote by the Official Committee of Unsecured Creditors. Future changes to
5 the trustee and/or advisory board shall be determined pursuant to the terms of the Trust Agreement.
6

7 **“Business Day”** means any day, excluding Saturdays, Sundays and “legal holidays” (as
8 defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in Nevada.

9 **“Cash”** means cash or cash equivalents.

10 **“Causes of Action”** means any and all actions, proceedings, causes of action, demands,
11 suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable
12 remedies, rights to payment and claims, whether known, unknown, suspected or unsuspected,
13 reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,
14 unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly
15 or derivatively, in law, equity or otherwise, including Avoidance Claims, unless otherwise waived
16 or released by the Debtor.
17

18 **“Chapter 11 Case”** means the Chapter 11 Case of the Debtor pending in the Bankruptcy
19 Court under Case No. 10-27855-BAM.

20 **“Claim”** means a “claim,” as defined in Section 101 of the Bankruptcy Code, against the
21 Debtor.
22

23 **“Claimholder”** means a holder of a Claim.

24 **“Class”** means a category of Claimholders or Interestholders.

25 **“Confirmation Date”** means the date of entry of the Confirmation Order.
26
27
28

1 **“Confirmation Hearing”** means the hearing before the Bankruptcy Court held to consider
2 confirmation of this Plan and related matters under Section 1128 of the Bankruptcy Code, as such
3 hearing may be adjourned or continued from time to time.

4 **“Confirmation Order”** means the order entered by the Bankruptcy Court confirming this
5 Plan.

6 **“Creditor”** means any holder of a Claim, whether or not such Claim is an Allowed Claim,
7 encompassed within the statutory definition set forth in Section 101(10) of the Bankruptcy Code.

8 **“Creditors’ Committee”** means the Official Committee of Unsecured Creditors appointed
9 pursuant to Section 1102(a) of the Bankruptcy Code in the Chapter 11 Cases, as the membership
10 thereof may change from time to time.

11 **“Cure”** means: (a) the cure of any non-monetary defaults to the extent required, if at all,
12 pursuant to Section 365 of the Bankruptcy Code; and (b) with respect to monetary defaults, the
13 distribution within a reasonable period of time following the Effective Date of Cash, or such other
14 property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to
15 the assumption (or assumption and assignment) of an executory contract or unexpired lease,
16 pursuant to Section 365 of the Bankruptcy Code, in an amount equal to all unpaid monetary
17 obligations or such other amount as may be agreed upon by the parties, under such executory
18 contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy
19 Code and applicable non-bankruptcy law.

20 **“Debtor”** means American Pacific Financial Corporation.

21 **“DIP Credit Agreement”** means that certain Debtor in Possession Loan Agreement, dated
22 as of 12/11/09, as amended, supplemented or otherwise modified from time to time, and all
23 documents executed in connection therewith, by and among the Debtor and the DIP Lender, which
24 was executed by the Debtor.

1 **“DIP Claim”** means all “Obligations” (as defined in the DIP Order) outstanding under the
2 DIP Order as of the Effective Date.

3 **“DIP Order”** means, collectively, (i) the interim order that was entered by the Bankruptcy
4 Court on _____ authorizing and approving the DIP Facility and the agreements related
5 thereto, and (ii) any and all orders entered by the Bankruptcy Court authorizing and approving
6 amendments to the DIP Credit Agreement.

7
8 **“DIP Lenders”** means the lenders from time to time party to the DIP Credit Agreement.

9 **“Disallowed Claim” or “Disallowed Interest”** means a Claim or any portion thereof, or an
10 Interest or any portion thereof, that: (a) has been disallowed by a Final Order; (b) is Scheduled at
11 zero or as contingent, disputed or unliquidated and as to which a proof of claim or interest bar date
12 has been established but no proof of claim or interest has been timely filed or deemed timely filed
13 with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the
14 Bankruptcy Court or otherwise deemed timely filed under applicable law; or (c) is not Scheduled
15 and as to which a proof of claim or interest bar date has been set but no proof of claim or interest
16 has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the
17 Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed
18 under applicable law.

19
20 **“Disclosure Statement”** means the written disclosure statement that relates to this Plan, as
21 approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code and
22 Bankruptcy Rule 3017; as such disclosure statement may be amended, modified or supplemented
23 from time to time.

24
25 **“Disputed Claim or Disputed Interest”** means a claim or any portion thereof, or any
26 Interest or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, or an
27 Allowed Interest or a Disallowed Interest, as the case may be, and includes, without limitation,
28

1 Claims or Interests that (a) have not been Scheduled by the Debtor or have been Scheduled at zero,
2 or have been Scheduled as unknown, contingent, unliquidated or disputed and are the subject of a
3 timely filed proof of claim or interest that differs in nature, amount or priority from the Schedules,
4 or (b) are the subject of an objection filed with the Bankruptcy Court, which has not been
5 withdrawn or overruled by a Final Order of the Bankruptcy Court.
6

7 **“Distribution Date”** means the date, selected by the Debtor, occurring as soon as
8 practicable after the Effective Date as determined by the Debtor and/or the Trustee, upon which
9 distributions to holders of Allowed Claims and Allowed Interests entitled to receive distributions
10 under this Plan shall commence.

11 **“Effective Date”** means the Business Day determined by the Debtor on which all
12 conditions to the consummation of this Plan have been either satisfied or waived as provided in this
13 Plan and is the day upon which this Plan is substantially consummated.
14

15 **“Estate”** means the bankruptcy Estate of the Debtor created pursuant to Section 541 of the
16 Bankruptcy Code.

17 **“Exhibit”** means an exhibit annexed to either this Plan, in a supplement to the Plan or as an
18 appendix to the Disclosure Statement.

19 **“Exhibit Filing Date”** means the date on which Exhibits to this Plan or the Disclosure
20 Statement shall be filed with the Bankruptcy Court, which date shall be at least ten (10) days prior
21 to the commencement of the hearing to consider approval of the Disclosure Statement.
22

23 **“Face Amount”** means: (a) when used in reference to a Disputed or Disallowed Claim, the
24 full stated liquidated amount claimed by the Claimholder in any proof of claim timely filed with the
25 Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or
26 other applicable bankruptcy law, or the amount of the Claim acknowledged by the Debtor in any
27 objection Filed to such Claim or in the Schedules as a noncontingent, liquidated and undisputed
28

1 Claim, estimated by the Bankruptcy Court pursuant to Section 502(c) of the Bankruptcy Code or
2 proposed by the Debtor or the Trustee and approved by the United States trustee, if no proof of
3 Claim has been Filed by the Bar Date or has otherwise been deemed timely Filed under applicable
4 law or if the proof of Claim specifies an unliquidated amount.; and (b) when used in reference to an
5 Allowed Claim, the allowed amount of such Claim.
6

7 **“Final Order”** means an order or judgment, the operation or effect of which has not been
8 stayed, reversed or amended and as to which order or judgment (or any revision, modification or
9 amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no
10 appeal or petition for review or rehearing was filed or, if filed, remains pending.

11 **“Impaired”** refers to any Claim or Interest that is impaired within the meaning of Section
12 1124 of the Bankruptcy Code.

13 **“Interest”** means all equity interests in the Debtor, including all issued, unissued,
14 authorized or outstanding shares of stock, together with any warrants, options or contract rights to
15 purchase or acquire such interests at any time.
16

17 **“Interestholder”** means a holder of an Interest.

18 **“Net Sale Proceeds”** shall mean the Cash proceeds received by the Trust from the Asset
19 Sale less the cost of sale and an allocated cost of overhead. The overhead shall be agreed upon by
20 the Liquidation Trustee and the holder of an Allowed Secured Claim at the time the claim holder
21 determines whether their collateral should be transferred to the Trust.
22

23 **“Person”** means an individual, corporation, partnership, joint venture, association, joint
24 stock company, limited liability company, limited liability partnership, trust, estate, unincorporated
25 organization, governmental unit (as defined in Section 101(27) of the Bankruptcy Code) or other
26 entity.
27
28

1 **“Petition Date”** means with respect to Debtor 09/21/2010 the date on which Debtor filed
2 its petition for relief in the Bankruptcy Court.

3 **“Plan”** means this plan of Liquidation for the resolution of outstanding Claims and Interests
4 in the Chapter 11 Case, as herein proposed by the Debtor including all Exhibits, supplements,
5 appendices and schedules hereto, either in their present form or as the same may be further altered,
6 amended or modified from time to time in accordance with the Bankruptcy Code and Bankruptcy
7 Rules.
8

9 **“Priority Tax Claims”** means any and all Claims of a governmental unit of the kind
10 specified in Section 507(a)(8) of the Bankruptcy Code.

11 **“Professional”** means those Persons retained in the Chapter 11 Case by orders of the
12 Bankruptcy Court pursuant to Sections 327 and 1103 of the Bankruptcy Code or otherwise;
13 provided, however, that Professional does not include those Persons retained pursuant to the
14 Ordinary Course Professional Order.
15

16 **“Professional Claim”** means an Administrative Claim of a Professional for compensation
17 for services rendered or reimbursement of costs, expenses or other charges and disbursements
18 incurred relating to services rendered or expenses incurred after the Petition Date and prior to and
19 including the Effective Date.

20 **“Professional Fee Bar Date”** means the deadline by which all applications for
21 compensation or expense reimbursement, including Professional Claims, must be filed, which
22 deadline shall be forty-five (45) days after the Effective Date, unless otherwise ordered by the
23 Bankruptcy Court.
24

25 **“Pro Rata”** means, at any time, the proportion that the Face Amount of a Claim in a
26 particular Class or Classes bears to the aggregate Face Amount of all Claims (including Disputed
27
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1 Claims, but excluding Disallowed Claims) in such Class or Classes, unless the Plan provides
2 otherwise.

3 **“Purchaser”** means the purchaser or purchasers of the Sale Assets.

4 **“Released Parties”** means, collectively, (i) all officers, directors, managers and members of
5 the Debtor, and all independent contractors employed by the Debtor, in each case, as of the date of
6 the commencement of the hearing on the Disclosure Statement, (ii) the Statutory Committees and
7 all members of the Statutory Committees in their respective capacities as such, (iii) the DIP Lenders
8 in their capacities as such, (iv) all Professionals and (v) with respect to each of the above-named
9 Persons, such Person’s affiliates, principals, employees, agents, officers, directors, members,
10 managers, financial advisors, attorneys and other professionals, in their capacities as such.
11

12 **“Retained Actions”** means all Claims, Causes of Action, rights of action, suits and
13 proceedings, whether in law or in equity, whether known or unknown, which the Debtor or the
14 Debtor’s Estate may hold against any Person, including, without limitation, (a) Claims and Causes
15 of Action brought prior to the Effective Date, (b) Claims, Causes of Action brought as part of the
16 Adversary Proceeding, (c) Claims and Causes of Action against any Persons for failure to pay for
17 products or services provided or rendered by the Debtor, (d) Claims and Causes of Action seeking
18 the recovery of any of the Debtor’s accounts receivable, other receivables or rights to payment
19 created or arising in the ordinary course of the Debtor’s businesses, including without limitation,
20 claim overpayments and tax refunds and (e) Avoidance Claims, if any, in existence as of the
21 Confirmation Date.
22

23 **“Scheduled”** means, with respect to any Claim or Interest, the status, priority, and amount,
24 if any, of such Claim or Interest as set forth in the Schedules.
25

26 **“Schedules”** means the schedules of assets and liabilities and the statements of financial
27 affairs filed in the Chapter 11 Case by the Debtor, as such schedules or statements have been or
28

1 may be further modified, amended or supplemented from time to time in accordance with
2 Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

3 **"Secured Claims"** means all Claims secured by a security interest in or a lien on property
4 in which the Debtor's Estate has an interest or that is subject to setoff under Section 553 of the
5 Bankruptcy Code, to the extent of the value, as of the Effective Date or such other date as is
6 established by the Bankruptcy Court, of such Claimholder's interest in the Estate's interest in such
7 property or to the extent of the amount subject to setoff, as applicable, as determined by a Final
8 Order of the Bankruptcy Court or as otherwise agreed upon in writing by the Debtor and the
9 Claimholder.
10

11 **"Secured Tax Claims"** means the Secured Claim of any governmental taxing authority to
12 the extent of the value of the security interests securing such claims (taking into effect the value of
13 collateral and the priority and scope of the liens) as determined by Final Order in the Adversary
14 Proceeding.
15

16 **"Statutory Committees"** means the Creditors' Committee.

17 **"Trust"** means the Liquidating Trust which will be the successor to the Debtor under the
18 Plan.
19

20 **"Trust Agreement"** means the agreement governing the Liquidating Trust, attached as
21 Exhibit 5 to the Disclosure Statement.

22 **"Trust Assets"** means all property of the estate" of the Debtor in Possession, as that term is
23 defined in Bankruptcy Code Section 541 and all Avoidance Actions and Retained Actions.
24

25 **"Trustee"** means the person designated by the Official Committee of Unsecured Creditors
26 to serve as trustee for the Trust, pursuant to this Plan and the Trust Agreement. Future changes to
27 the trustee and/or advisory board shall be determined pursuant to the terms of the Trust Agreement.
28

1 **"Unsecured Claims"** means any Claim that is not a Secured Claim or Administrative
2 Claim, including, but not limited to, any deficiency claim belonging to a Claimholder that asserted
3 a Secured Claim.

4 **"Voting Deadline"** means the date established by the Bankruptcy Court by which holders
5 of Allowed Claims and Interests are determined for purposes of such holders' right to submit
6 Ballots.

7
8 **C. Rules of Interpretation**

9 For purposes of this Plan, unless otherwise provided herein, (a) whenever from the context
10 it is appropriate, each term, whether stated in the singular or the plural, will include both the
11 singular and the plural; (b) each pronoun stated in the masculine, feminine or neuter includes the
12 masculine, feminine and neuter; (c) unless otherwise provided in this Plan, any reference in this
13 Plan to a contract, instrument, release or other agreement or document being in a particular form or
14 on particular terms and conditions means that such document will be substantially in such form or
15 substantially on such terms and conditions; (d) any reference in this Plan to an existing document or
16 schedule filed or to be filed means such document or schedule, as it may have been or may be
17 amended, modified or supplemented pursuant to this Plan; (e) any reference to an entity as a holder
18 of a Claim or Interest includes that entity's successors and assigns; (f) all references in this Plan to
19 Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan;
20 (g) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a
21 particular portion of this Plan; (h) captions and headings to Articles and Sections are inserted for
22 convenience of reference only and are not intended to be a part of or to affect the interpretation of
23 this Plan; (i) subject to the provisions of any contract, certificates of incorporation, by-laws,
24 instrument, release or other agreement or document entered into in connection with this Plan, the
25 rights and obligations arising under this Plan shall be governed by, and construed and enforced in
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1 accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (j) the
2 rules of construction set forth in Section 102 of the Bankruptcy Code will apply.

3 **D. Computation of Time**

4 In computing any period of time prescribed or allowed by this Plan, unless otherwise
5 expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.
6

7 **E. References to Monetary Figures**

8 All references in this Plan to monetary figures shall refer to United States of America
9 currency, unless otherwise expressly provided.

10 **F. Exhibits**

11 All Exhibits are incorporated into and are a part of this Plan as if set forth in full herein and,
12 to the extent not annexed hereto, such exhibits shall be filed with the Bankruptcy Court on or before
13 the Exhibit Filing Date. After the Exhibit Filing Date, copies of Exhibits can be obtained upon
14 written request to McDonald Carano Wilson LLP, 100 W. Liberty Street, 10th Floor, Reno, Nevada
15 89501 (Attn: Kaaran E. Thomas, Esq.), counsel to the Debtor. To the extent any Exhibit is
16 inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-
17 Exhibit portion of this Plan shall control.
18

19 **ARTICLE II.**

20 **TREATMENT OF ADMINISTRATIVE CLAIMS AND PROFESSIONAL CLAIMS**

21 All Claims and Interests, except Administrative Claims, DIP Claims and Professional
22 Claims, are placed in the following Classes. In accordance with Section 1123(a)(1) of the
23 Bankruptcy Code, Administrative Claims, DIP Claims and Professional Claims, as described in
24 Article II.A, have not been classified and thus are excluded from the following Classes. A Claim or
25 Interest is classified in a particular Class only to the extent that the Claim or Equity Interest
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1 qualifies within the description of that Class and is classified in other Classes to the extent that any
2 remainder of the Claim or Interest qualifies within the description of such other Classes.

3 **A. Administrative Claims and Professional Claims**

4 On the Distribution Date occurring after the later of (a) the date an Administrative Claim or
5 Professional Claim becomes an Allowed Administrative Claim or an Allowed Professional Claim,
6 or (b) the date an Administrative Claim or Professional Claim becomes payable pursuant to any
7 agreement between the Debtor (or the Trustee) and the holder of such Administrative Claim or
8 Professional Claim, an Allowed Administrative Claimholder or holder of an Allowed Professional
9 Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for,
10 such Administrative Claim or Professional Claim, (i) Cash equal to the unpaid portion of such
11 Allowed Administrative Claim or (ii) such other treatment as to which the Debtor or the Trustee
12 and such Claimholder shall have agreed upon in writing; provided, however, that: (y) DIP Claims
13 shall be deemed Allowed Claims as of the Effective Date, which DIP Claims shall be paid in
14 accordance with this Plan; and (z) Allowed Administrative Claims with respect to liabilities
15 incurred by the Debtor in the ordinary course of business during the Chapter 11 Case, shall be paid
16 in the ordinary course of business in accordance with the terms and conditions of any agreement or
17 Final Orders of the Bankruptcy Court relating thereto.

18 If there are insufficient funds to pay Allowed Professional Claims in full at the
19 Confirmation Date or Effective Date, a holder of an Allowed Professional Claim may elect as its
20 sole discretion to continue to receive payments until paid in full on its claim from the Trust. Such
21 payments shall be made prior to any distribution by the Trust for distribution to unsecured creditors.
22 Notice of such election shall be provided to the Trust within 60 days of the Effective Date, or
23 within 60 days of such later date that the claimant knows or should know that its Allowed
24 Professional Claim will not be paid in full absent such election.
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1 **B. DIP Claims**

2 The DIP Claims shall be fully and finally satisfied in accordance with their terms on or
3 before the Effective Date or receive such other treatment as to which the Debtor and the DIP
4 Lender shall have agreed upon in writing.

5 **ARTICLE III.**

6 **CLASSIFICATION OF CLAIMS AND INTERESTS**

7
8 Pursuant to Bankruptcy Code Section 1122, set forth below is a designation of Classes of
9 Claims against and Interests in the Debtor. A Claim or Interest is placed in a particular Class for
10 the purposes of voting on this Plan and of receiving distributions pursuant to this Plan only to the
11 extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and
12 such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

13 This Plan constitutes a separate plan proposed by the Debtor.

14
15 Class 1 (Secured Claims)

16 Class 2 (Priority Claims)

17 Class 3 (Unsecured Claims)

18 Class 4 (Administrative Convenience Claims)

19 Class 5 (Equity Interests)

20 **ARTICLE IV.**

21 **IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS**
22 **IMPAIRED AND UNIMPAIRED BY THE PLAN**

23 **A. Classes of Claims and Interests that are Unimpaired**

24 There are no classes of unimpaired claims.

25 **B. Impaired Classes of Claims**

26 All of the classes of Claims are impaired.
27
28

1 **ARTICLE V.**

2 **PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS**

3 The treatment of Claims and Interests as provided in this Article V represents a compromise
4 and full and final settlement pursuant to Bankruptcy Code Section 1123(b)(3) and Bankruptcy Rule
5 9019, of the various Claims and Interests of Parties in interest in the Chapter 11 Case.

6 **Class 1 (Secured Claims).** Impaired.

7 Class 1 consists of all of the holders of Allowed Secured Claims secured by valid, perfected and
8 enforceable liens and security interests in property of the estate.

9 Class 1A consists of all Allowed Secured Claims secured by Debtor's property in Hesperia
10 California with a book value of \$1,233,718.43:

11 Waveta Taylor 1st lien parcel 1:	Debt	\$55,931.67
12 Mercer Pension 2nd lien parcel 1:	Debt	\$1,000,408.40
13 William Mudd 3rd lien parcel 1:	Debt	400,000.00
14 Charles McCamey 1st lien parcel 4:	Debt	\$300,000.00
15 William Mudd 2nd lien parcel 4:	Debt	\$400,000.00
16 William Mudd 1st lien parcel 5:	Debt	\$400,000.00

17 This property is also encumbered by the lien securing payment of taxes to San Bernardino
18 County. (Class 1B)

19 And all Allowed Secured Claims secured by Debtor's two lots on Scotch Lane in Colton
20 California, with a book value of \$411,608.37, have the following lien holders:

21 Ada Albright 1st lien:	Debt	\$50,000.00
---------------------------	------	-------------

22 Treatment: Class 1A creditors will retain their liens on the property securing payment of their
23 Allowed Secured Claims. They will have the election to either receive their collateral on the

1 Effective Date or have their collateral assigned to the Trust. If they elect to have their collateral
2 assigned to the Trust, and if the Liquidating Trustee agrees to accept the Collateral, the Trust will
3 manage and sell the collateral. Class 1A creditors will receive the Net Proceeds from sale of their
4 collateral. The secured claimant shall retain its liens until the secured claim is paid in full.

5
6 Class 1B consists of the Allowed Secured Claim of San Bernardino County Tax Assessor.
7 Class 1B shall retain the liens securing payment of its Allowed Secured Claim. On or before the
8 Effective Date, at the election of the Liquidating Trustee, the property securing the Class 1B Claim
9 will either be abandoned or transferred to the Liquidating Trust subject to the Class 1B claim. If
10 the Liquidating Trust acquires the property the Liquidating Trustee will pay the Class 1B claim
11 over 5 years. Payments shall start on the Effective Date. The claim shall be paid in full with all
12 applicable costs, fees, charges, (including late charges) and interest in accordance with sections 11
13 USC 506(b) and 511 and in the manner described in 11USC 1129(c). The secured claimant shall
14 retain its liens until the secured claim is paid in full. The current taxes for the year 2011-12 will
15 also be paid timely in the normal and ordinary course of business in full with all applicable costs,
16 fees, charges, (including late charges) and interest in accordance with sections 11 USC 506(b) and
17 511.

18 The Class 1B Claim will be paid upon the sale/transfer of the real property, to the extent
19 sale proceeds are sufficient to pay the claim. Payment will be made at the close of escrow and
20 directly from the sale proceeds in full.

21 In the event the Trust abandons the real property securing the San Bernardino Secured
22 Claim, the Secured Tax Claim will continue to remain as a lien on the property and the Debtor, the
23 Estate and the Trust will be not liable for the Secured Tax Claim. The Trust shall have no liability
24 for any deficiency owing to Class 1B after its collateral is sold.

25 The property securing the Class 1B claim shall be sold within five (5) years from the
26 Effective Date.

27 **Class 2 (Priority Claims).**

28 Class 2 consists of the holders of Allowed Priority Claims. Priority claims are Prepetition

1 unsecured claims that are entitled to be paid ahead of other general Prepetition Allowed Unsecured
2 Claims by virtue of Bankruptcy Code Section 507. The holder of Priority Claims is Larry R.
3 Polhill (2008 wages for \$11,000).

4 Priority Wage Claims will receive trust certificates for payment of their claims without
5 interest. The Priority Wage claims will be paid from liquidation of Trust Assets before payment to
6 Class 3 and Class 4 Claims.

7 **Class 3 (Unsecured Claims).**

8 Class 3 consists of general Prepetition Allowed Unsecured Claims in excess of Five
9 Thousand Dollars (\$5,000.00), which will receive certificates in the Liquidating Trust.

10 Each holder of an Allowed Unsecured Claim against APFC shall receive a trust certificate
11 entitling it to its Pro Rata distribution of the Class 3 Participation Agreement from the Trust, up to
12 the amount of its Allowed Claim together with interest at the federal judgment rate.

13 Notwithstanding the foregoing, the holder of a Claim in Class 3 may receive such other less
14 favorable treatment as to which the holder of such claim and the Debtor or Trustee, as applicable,
15 have agreed upon in writing.

16 **Class 4 (Administrative Convenience Claims).**

17 Class 4 consists of Prepetition Allowed Unsecured Claims of Five Thousand Dollars
18 (\$5,000.00) or less. Up to five (5) holders of Allowed Claims in Class 3 may elect to reduce the
19 amount of their claims to \$5,000.00 to participate in Class 4.

20 Each holder of an Allowed Administrative Convenience Claim against APFC shall receive
21 Cash in the amount of fifty (50%) percent of its Allowed Claim out of the first distribution from the
22 Trust after Administrative Claims and Claims in classes 1 and 2 are paid in full

23 **Class 5 (Equity Interests).**

24 Class 5 consists of Equity Interests (shares) in the Debtor. All Equity Interests are owned by
25 Mr. Larry Polhill.
26
27
28

1 On the Effective Date, the Debtor's Equity Interest Holder's stock shall be cancelled. Class
2 5 shall receive trust certificates entitling them to receive any Trust Assets remaining after all
3 creditors are paid in full with interest.

4
5 **ARTICLE VI.**

6 **ACCEPTANCE OR REJECTION OF THE PLAN;**
7 **EFFECT OF REJECTION BY ONE OR MORE IMPAIRED**
8 **CLASSES OF CLAIMS OR INTERESTS**

9 **A. Impaired Classes of Claims Entitled to Vote**

10 Except as otherwise provided in Orders of the Bankruptcy Court pertaining to solicitation
11 of votes on this Plan holders of Allowed Claims in each Impaired Class are entitled to vote in their
12 respective classes as a class to accept or reject the Plan.

13 **B. Acceptance by Impaired Classes**

14 Pursuant to Bankruptcy Code Section 1126(c) and except as provided in Bankruptcy Code
15 Section 1126(e), an Impaired Class (Classes 1, 3 and 4) has accepted the Plan if the Plan is
16 accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in
17 number of the Allowed Claims of such Class that have timely and properly voted to accept or reject
18 the Plan.

19 **C. Confirmation Pursuant to Section 1129 (b) of the Bankruptcy Code**

20 If any impaired classes of Claims entitled to vote should not accept this Plan by the
21 requisite statutory majorities provided in Bankruptcy Code Section 1126 (c), Debtor reserves the
22 right to request that the Bankruptcy Court confirm this Plan under Section 1129 (b) of the
23 Bankruptcy Code.
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ARTICLE VII.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Means of Implementation

1. Establishment of the Trust. On the Effective Date, the Debtor, on its own behalf and on behalf of the holders of the holders of Allowed Claims will take all steps necessary to establish the Trust pursuant to the Trust Agreement.

The Debtor will transfer all the Trust Assets, including the Avoidance Actions and Retained Actions, to the Trustee, who will own and manage the Trust Property in consultation with the Advisory Board, and will be responsible for funding the costs and expenses of the Trust.

The Creditors Committee will select the Trustee and any advisory committee to serve in connection with the Trust.

2. Exclusivity Period. Debtor will retain the exclusive right to amend or modify this Plan and to solicit acceptances of any amendments to or modifications of this Plan, through and until the Effective Date.

3. Corporate Action. Each of the matters provided for in this Plan involving the corporate structure of the Debtor or corporate action to be taken by or required of the Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized approved and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further action by stockholders, creditors or directors of the Debtor.

4. Exemption from Certain Transfer Taxes and Recording Fees.

(a) Exemption. Pursuant to Bankruptcy Code Section 1146 (c), any transfers from the Debtor to a Trust or to any other Person or entity pursuant to this Plan, or any agreement regarding the transfer of title to or ownership of any of the Debtor's real or personal property will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax,

1 mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or
2 recording fee, or other similar tax or governmental assessment, and the Confirmation Order will
3 direct the appropriate state or local governmental officials or agents to forego the collection of any
4 such tax or governmental assessment and to accept for filing and recordation any of the foregoing
5 instruments or other documents without the payment of any such tax or governmental assessment.
6

7 **(b) Subsequent Issuances.** All subsequent issuances, transfers or exchanges of any
8 instrument of transfer by Debtor in the Chapter 11 Case, whether in connection with a sale,
9 transfer, or the making, delivery or recording of any deed or other instrument or transfer shall be
10 deemed in furtherance of the Plan.

11 **B. Post-Effective Date Entities**

12 The Trust shall be governed and created pursuant to the Plan and the Trust Agreement. A
13 copy of the proposed Trust Agreement shall be included in the Plan Documents Supplement. The
14 Trust shall have the discretion, subject to the terms of the Trust Agreement, to retain and
15 compensate professionals, to obtain and store Debtor's records, to compensate the Trustee, object
16 to Claims, realize assets, whether by suit, compromise, release or otherwise, and take all actions
17 reasonable to maximize the recovery to beneficiaries of the Trust.
18

19 The Trustee shall be designated; and Debtor shall provide all disclosures required
20 respecting the Trustee pursuant to Bankruptcy Code Sections 1129 (a)(4) and (a)(5), not less than
21 ten days before the Confirmation Hearing. The Trustee shall be approved by the Court at the
22 Confirmation Hearing.
23

24 The APFC Holders of Allowed Claims and Interests will hold all beneficial interests in the
25 Trust
26
27
28

1 **C. Preservation of Rights , Causes of Action and Defenses/No Waiver of Claims**

2 Except as expressly released or otherwise expressly provided in the Plan, pursuant to
3 Bankruptcy Code section 1123(b), the Trust shall be vested with and shall retain and may enforce
4 any claims, rights, and causes of action that the Debtor or the Estates may hold or have against any
5 entity, all of which are hereby preserved, including the Avoidance Actions and Retained Actions,
6 and all rights of disallowance, offset, recharacterization and/or equitable subordination with respect
7 to Claims, and causes of action that have been or may be brought by or on behalf of the Debtor, the
8 Estate, or the Trust. Such claims, rights and causes of action shall remain assets of and vest in the
9 Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not
10 any such claims, rights and causes of action have been listed or referred to in the Plan, the
11 Disclosure Statement, or any other document filed with the Court. Neither the Debtor, the Estates,
12 nor the Trust waives, releases, relinquishes, forfeits, or abandons (nor shall they be estopped or
13 otherwise precluded or impaired from asserting) any claims, rights and causes of action, including
14 the Avoidance Actions and Retained Actions, or defenses that constitute property of the Debtor or
15 its Estate: (a) whether or not such claims, rights, causes of action, including the Avoidance Actions
16 and Retained Actions, or defenses have been listed or referred to in this Plan, the Disclosure
17 Statement, or any other document filed with the Court, (b) whether or not such claims, rights and
18 causes of action, including the Avoidance Actions and Retained Actions or defenses are currently
19 known to the Debtor, and (c) whether or not a defendant in any litigation relating to such claims,
20 rights and causes of action, including the Avoidance Actions and Retained Actions, filed a proof of
21 claim in any of the Case, filed a notice of appearance or any other pleading or notice in any of the
22 Cases, voted for or against this Plan, or received or retained any consideration under this Plan.
23 Without in any manner limiting the scope of the foregoing, notwithstanding any otherwise
24 applicable principle of law or equity, including any principles of judicial estoppel, res judicata,
25 collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe,
26 identify, analyze or refer to any claims, rights and causes of action, including the Avoidance
27 Actions and Retained Actions, or defenses in the Plan, the Disclosure Statement, or any other
28

1 document filed with the Court shall in no manner waive, eliminate, modify, release, or alter the
2 right of the Estate or the Trust to commence, prosecute, defend against, settle, recover on account
3 of, and realize upon any such claims, rights and causes of action, including the Avoidance Actions
4 and Retained Actions, that the Debtor or its Estate have or may have as of the Effective Date.

5 The Debtor expressly reserves all its claims, rights and causes of action, including the
6 Avoidance Actions and Retained Actions, and defenses for later adjudication by the Trust and,
7 therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue
8 preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply
9 to such claims, rights and causes of action, including the Avoidance Actions and Retained Actions
10 and defenses upon or after the confirmation or consummation of the Plan based on the Disclosure
11 Statement, the Plan or the Confirmation Order. In addition, the Trust expressly reserves the right to
12 pursue or adopt claims, rights and causes of action, including the Avoidance Actions and Retained
13 Actions that are alleged in any lawsuits in which the Debtor is a defendant or an interested party,
14 against any entity, including the plaintiffs or co-defendants in such lawsuits. Any entity to whom
15 the Debtor has incurred an obligation (whether on account of services, purchase, sale of goods or
16 otherwise), or who has received services from the Debtor, or who has received money or property
17 from the Debtor, or who has transacted business with the Debtor, or who has leased equipment or
18 property from or to the Debtor should assume that such obligation, receipt, transfer or transaction
19 may be reviewed by the Trust subsequent to the Effective Date and may be the subject of an action
20 after the Effective Date, whether or not: (a) such entity has Filed a proof of Claim against the
21 Debtor in this Case; (b) such entity's proof of Claim has been objected to by the Debtor; (c) such
22 entity's Claim was included in the Debtor's Schedules; or (d) such entity's scheduled Claim has
23 been objected to by the Debtor or has been identified by the Debtor as contingent, unliquidated or
24 disputed.

25 **Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of the**
26 **Debtor or any other person to object to any Claim for purposes of voting, the failure of the**
27 **Debtor or any other person to object to a Claim or Administrative Claim before confirmation**
28

1 or consummation of the Plan or the Effective Date, the failure of any person to assert a claim
2 or cause of action before confirmation or consummation of the Plan or the Effective Date, the
3 absence of a proof of claim having been filed with respect to a Claim, nor any action or
4 inaction of the Debtor or any other person with respect to a Claim, or Administrative Claim,
5 other than a legally effective express waiver or release, shall be deemed a waiver or release of
6 the right of the Debtor, the Estate or the Trust, before or after solicitation of votes on the Plan
7 or before or after the Confirmation Date or the Effective Date to (a) object to or examine such
8 Claim or Administrative Claim, in whole or in part or (b) retain and either assign or
9 exclusively assert, pursue, prosecute, utilize, otherwise act or otherwise enforce any claim or
10 cause of action against the holder of any such Claim.

11 **D. Injunction**

12 Holders of Claims against and Equity Interest in the Debtor may not pursue (1) property of
13 the Estate other than through the Claims and Equity Interests allowance process; or (2) the
14 Released Parties.

15
16 No holder of a Claim or Equity Interest may receive any payment from or seek recourse
17 against any assets that are distributed or to be distributed under the Plan except for those assets
18 required to be distributed to such holder as expressly provided for in the Plan. As of the Effective
19 Date, all Entities are precluded from asserting against the Estate, the Trust or any assets that are
20 distributed or to be distributed under the Plan any Claims, rights, Causes of Action, liabilities or
21 interests based upon any act or omission, transaction or other activity of any kind or nature that
22 occurred prior to the Effective Date, other than as expressly provided in the Plan or Confirmation
23 Order, regardless of the filing, lack of filing, allowance or disallowance of such a Claim or Equity
24 interest and regardless of whether such an Entity has voted to accept or reject the Plan.

25
26 Except as otherwise provided in the Plan or the Confirmation Order, on and after the
27 Effective Date all Entities that have held, currently hold or may hold a debt, Claim, other liability
28

1 or Interest against or in the Debtor shall be permanently enjoined from taking any of the following
 2 actions on account of such debt Claim, liability, Interest or right: (A) commencing or continuing in
 3 any manner any action or other proceeding on account of such debt, Claim, liability Interest or
 4 right against assets or proceeds thereof that are to be distributed under the Plan, other than to
 5 enforce any right to a distribution with respect to such assets or the process thereof as may be
 6 provided under the Plan; (B) enforcing, attaching, collecting or recovering in any manner any
 7 judgment, award, decree or order against any assets to be distributed under the Plan, other than as
 8 permitted under subparagraph (A) above; and (C) creating, perfecting or enforcing any lien or
 9 encumbrance against any assets to be distributed under the Plan, other than as permitted by the Pan,
 10 provided that nothing contained herein shall limit the rights of any distribute under the Plan from
 11 taking any actions in respect of property distributed or to be distributed to it under the Plan.
 12

13 **ARTICLE VIII.**

14 **EXECUTORY CONTRACTS AND LEASES**

15 **A. Executory Contracts**

16 All executory contracts and unexpired leases set forth on Exhibit "4" to the Disclosure
 17 Statement [to be filed on the Exhibit Filing Date] will be assumed by the Debtor and assigned to
 18 the Trust or a designated assignee under Section 365 of the Bankruptcy Code, by Order of the
 19 Bankruptcy Court. All remaining executory contracts and unexpired leases shall be deemed
 20 rejected under Section 365 of the Bankruptcy Code.
 21

22 **B. Approval of Assumption or Rejection**

23 Entry of the Confirmation Order shall constitute: (i) the approval pursuant to Bankruptcy
 24 Code Section 365(a) of the assumption of the executory contracts and unexpired leases set forth on
 25 Exhibit "4". Entry of the Confirmation Order shall constitute the approval, pursuant to Bankruptcy
 26 Code Section 365, of the rejection of the executory contracts and unexpired leases that are not
 27
 28

1 listed on Exhibit "4".

2 **C. Cure of Defaults**

3 To the extent that such cure Claims constitute monetary defaults, the cure amount Claims
4 associated with each assumed executory contract and unexpired lease will be satisfied by the
5 Debtor or the Trust pursuant to Section 365 of the Bankruptcy Code.

6
7 **D. Rejection Claim Bar Date and Requirements for Rejection Claims**

8 Claims arising from the rejection of an Executory Contract or Unexpired Lease (a
9 "Rejection Claim") must be filed thirty (30) days after the Effective Date (the "Executory
10 Contracts Bar Date") or such Claims will be forever barred and will not be enforceable against the
11 Trust or the Trust Assets. The Rejection Claim must state the specific amount of damages asserted
12 and provide documents supporting the calculation. Any Rejection Claim that does not comply with
13 this requirement will be deemed Disallowed.
14

15 **ARTICLE IX.**

16 **CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE**

- 17 • The Confirmation Order shall have become a Final Order;
- 18 • No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy
19 Code has been made, or, if made, remains pending;
- 20 • Each exhibit, document or agreement to be executed in connection with the Plan shall be in
21 final form acceptable to the Debtor and the DIP Lender and their respective counsel, and
22 the Trust Agreement shall be in final form acceptable to the foregoing entities;
- 23 • The Class 3 Trust Agreement shall have been executed and delivered;
- 24 • The Exit Facility shall each be in full force and effect and all conditions therein to the
25 obligations of the parties to such loans shall have been satisfied or waived as set forth in the
26 Exit Facility Documents;
27
28

- All other agreements, writings and undertakings required under the Plan shall be executed and ready for consummation; and
- Debtor may waive any of the above conditions to the Effective Date, in whole or in part and in its sole and absolute discretion by Filing a written waiver.

ARTICLE X.

DISTRIBUTION OF CONSIDERATION

A. Objections to Claims

1. **Deadlines.** Unless otherwise extended by the Court, objections to the allowance of Claims shall be Filed and served upon the Entities asserting such Claims as follows: (A) for any and all Claims to which the General Bar Date applies, forty-five (45) days after the Effective Date; (B) for any and all Claims to which the Administrative Claims Bar Date applies, thirty (30) days after the Administrative Claims Bar Date; and (C) for any and all Claims to which the Executory Contracts Bar Date applies, thirty (30) days after the expiration of that Bar Date.

2. **Authority to File Claim Objections.** Any Party In Interest, including the Debtor or the Class 3 Trustee, may file an objection to any Claim or Interest, regardless of whether the applicable Claims Bar Date occurs before or after the Effective Date. The Trustee shall have the authority to settle any Claim or Interest in accordance with the terms of the Trust Agreement.

B. Disputed Claims and Disputed Interests – Cash Reserves

1. **General.** On the Effective Date, no distributions shall be made unless a Claim is an Allowed Claim on the Effective Date. Except as may otherwise be agreed with respect to any Disputed Claim or Disputed Interest, no payment or distribution will thereafter be made with respect to all or any portion of a Disputed Claim or Disputed Interest until such Claim or Interest is an Allowed Claim or Interest. Payments to all holders of Claims and Interests must be made in accordance with the Plan.

1 **2. Establishment of Cash or Other Reserves.** Prior to making any distribution of
2 Cash or APFC Class 3 Trust Interests on Allowed Claims in accordance with the terms of this Plan,
3 the Trust shall establish a reserve for each Disputed Claim. The reserve shall equal the amount of
4 Cash or Trust Interests, as applicable, that would have been distributable had such Disputed Claim
5 been Allowed on the Effective Date in the amount set forth in the Proof of Claim or, if no Proof of
6 Claim has been filed, the amount set forth in the Schedules as not disputed, contingent or
7 unliquidated.
8

9 The Debtor or the Trustee may file a Motion seeking an Order setting a reserve in an
10 amount different than specified above.

11 **3. Estimation.** As to any Disputed Claim, the Debtor or the Trustee may request in
12 their sole discretion that the Court estimate such Claim pursuant to Section 502(c) of the
13 Bankruptcy Code and set a Cash reserve based upon this estimation.
14

15 **4. Distribution upon Allowance.** Within five (5) Business Days of a Disputed Claim
16 becoming an Allowed Claim the holder of such Claim shall be paid in Cash or in Trust Interests in
17 accordance with this Plan and Trust Agreement, as applicable, from the reserve for such Claim.
18 The amount of Cash or Trust Interests released from the reserve to make such a distribution shall
19 be calculated on a Pro Rata basis so that the holder of the newly Allowed Claim receives a
20 distribution equal to the total percentage distributions made prior to the date that its Claim was
21 Allowed to the holders of other Allowed Claims in the same Class or with the same Priority.
22

23 **5. Release of Reserves.** If a Disputed Claim or any portion thereof is Disallowed, the
24 reserve shall be released for Distribution to holders of Allowed Claims in accordance with the Plan.
25 If a Disputed Claim or any portion thereof becomes an Allowed Claim in an amount that is less
26 than the reserve for such Claim the excess reserve related to such Claim shall be released for
27 distribution to holders of Allowed Claims in accordance with the Plan and the Trust Agreement.
28

1 **6. Undeliverable or Returned Distributions.** If (1) the Debtor or the Trustee shall be
2 unable, at the time that the distribution to holders of Allowed Claims is to be made under the Plan
3 to deliver the portion of such distribution to a holder of an Allowed Claim (2) any amount paid to
4 the holder of an Allowed Claim is returned as undeliverable and the Debtor or Trustee are unable,
5 after reasonable effort, to ascertain a correct address for the holder entitled thereto within three (3)
6 months of its return, or (3) any check distributed in payment of an Allowed Claim is neither
7 returned nor negotiated within three (3) months of the date distributed, then, in every such case,
8 the Allowed Claim shall be deemed disallowed and the holder thereof shall have no further right to
9 payment against or distribution from the Debtor, the Estate or the Trust.
10

11 **C. De Minimis Distributions**

12 Neither the Debtor nor the Trustee shall make any distributions to the holder of an Allowed
13 Claim in an Impaired Class if the amount to be distributed on account of such Claim is less than
14 two hundred and fifty (\$250) dollars. Any holder of an Allowed Claim on account of which the
15 amount to be distributed is less than two hundred fifty (\$250) dollars will have its Claim for such
16 distribution discharged and will be forever barred from asserting any such claim against the Trust
17 or its property. Any such distributions that are retained on account of this provision will be made
18 available for distribution to holders of all other Allowed Claims that are permissible under the
19 terms of the Plan.
20

21 **D. Trustee Bond**

22 The Trustee shall serve without posting a bond unless otherwise required by the Court or
23 determined by the Debtor to be necessary, and shall be released from all liability for the
24 performance of its actions hereunder or under the Trust Agreement except to the extent such
25 actions may be in perpetration of an actual fraud, the result of gross negligence or willful
26 misconduct or in violation of the specific provisions of this Plan or directly controlling orders of
27
28

1 the Bankruptcy Court.

2 **E. Compensation**

3 The Trustee shall receive, without the need for Court approval, a fee in the amount set forth
4 in the Trust Agreement. In addition, the Trustee will be entitled to reasonable out of pocket
5 expenses incurred in connection with services rendered in accordance with the Trust Agreement.
6

7 **F. Manner of Payment under the Plan**

8 Cash payments made pursuant to the Plan shall be in United States Dollars by checks drawn
9 on a domestic bank selected by the Trustee or by wire transfer from a domestic bank, at the option
10 of the Trustee

11 **G. Compliance with Tax Requirements**

12 In connection with the Plan, to the extent applicable, the Debtor and the Trustee shall
13 comply with all withholding and reporting requirements imposed on them by any governmental
14 unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting
15 requirements.
16

17 **ARTICLE XI.**

18 **MISCELLANEOUS PROVISIONS**

19 **A. Limitation of Liability and Releases**

20 None of the Debtor, the Debtor in Possession, the Committee, the Members of Committee
21 nor any of the Released Parties shall have or incur any liability to any Entity for any act taken or
22 omission made in good faith in connection with or related to the Chapter 11 Case or the Estate,
23 including objections to or estimations of claims, disposition of assets or formulating, determining
24 not to solicit acceptances or rejections to or confirming the Plan, or any contract, instrument,
25 release or other document created in connection therewith.
26
27
28

1 **B. Execution of Documents and Corporate Action**

2 The Debtor and Debtor in Possession, without any action by holders of Interests, shall
3 execute such documents and take such other action as is necessary to effectuate the transactions
4 provided for in the Plan; or such documents shall be deemed to be executed.

5 **C. Notice of Effective Date**

6 As soon as practicable after the occurrence of the Effective Date, but no later than ten (10)
7 days thereafter, the Debtor shall File and serve on each holder of a Claim a written notice of the
8 occurrence of the Effective Date.
9

10 **D. Retention of Jurisdiction**

11 Under Bankruptcy Code Sections 105 (a) and 1142, and notwithstanding entry of the
12 Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain
13 exclusive jurisdiction over all matters arising out of and related to the Chapter 11 Case, the assets
14 and liabilities of the Estate, the Trust and the Plan to the fullest extent permitted by law, including,
15 but not limited to:
16

17 Allowing, disallowing, determining, liquidating, classifying, estimating or establishing the
18 priority or secured or unsecured status of any Claim not otherwise allowed under the Plan,
19 including resolving any request for payment of any Administrative Expense Claim;

20 Hearing and determining all applications for compensation and reimbursement of expenses
21 of Professionals under the Plan or under Bankruptcy Code Sections 330, 331, 503(b) 1103 and
22 1129(a)(4); provided, however, that from and after the Effective Date, the fees and expenses of the
23 Trust shall be made in the ordinary course of business and shall not be subject to Bankruptcy Court
24 approval;
25

26 Hearing and determining all matters related to any executory contracts and unexpired leases
27 to which the Debtor is a party or with respect to which the Debtor may be liable;
28

1 Effectuating performance of and payments under the provisions of the Plan;

2 Hearing and determining all adversary proceedings, motions, applications, requests for
3 disgorgement and contested or litigated matters arising out of, arising under or related to the
4 Chapter 11 Case;

5 Entering such Orders as may be necessary or appropriate to execute, implement, or
6 consummate the provisions of the Plan and all contracts, instruments, releases and other
7 agreements or documents created in connection with the Plan, the Disclosure Statement or the
8 Confirmation Order, including the Trust Agreement;

9
10 Hearing and determining disputes arising in connection with the interpretation,
11 implementation, consummation or enforcement of the Plan, including disputes arising under
12 agreements, documents or instruments created in connection with the Plan such as the Trust
13 Agreement;

14
15 Modifying the Plan or the Trust Agreement at the request of the Debtor or the Trustee in
16 accordance with the terms of the Trust Agreement and as provided by applicable law, including to
17 cure any omission or to reconcile any inconsistencies;

18 Issuing injunctions, entering and implementing other orders or taking such other actions as
19 may be necessary or appropriate to restrain interference by any Entity with implementation,
20 consummation or enforcement of the Plan, the or the Confirmation Order;

21
22 Entering and implementing such Orders as may be necessary or appropriate if the
23 Confirmation Order is by any reason stayed, reversed, revoked, modified or vacated;

24 Enforcing all orders, judgments, injunctions, releases, exculpations and rulings entered in
25 connection with the Chapter 11 Case;

26 Hearing and determining all matters concerning state, local and federal Taxes in accordance
27 with Bankruptcy Code Sections 346, 505 and 1146;
28

1 Approving compromises and settlements under Rule 9019 of the Bankruptcy Rules to the
2 extent required under or included in the Plan;

3 Hearing and determining such other matters pertaining to the Trust Assets including the
4 Avoidance Actions and Retained Actions;

5 Hearing and determining such other matters as may be provided in the Confirmation Order
6 or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

8 Entering a final decree closing the Chapter 11 Estate.

9 **E. Binding Effect**

10 The rights, benefits and obligations of any Entity or Person named or referred to in the Plan
11 are binding on, and will inure to the benefit of, any permitted heirs, executors, administrators,
12 successors or assigns of such Entity or Person.

14 **F. Amendment, Modification and Severability**

15 1. The Plan may be amended or modified before the Effective Date by the Debtor to
16 the extent provided by Bankruptcy Code Section 1127.

17 2. The Debtor reserves the right to modify or amend the Plan upon a determination by
18 the Court that the Plan, as it is currently drafted, is not confirmable pursuant to Bankruptcy Code
19 Section 1129.

20 3. A modification of the Trust Agreement by the beneficiaries
21 thereof shall not constitute a modification of the Plan.

23 **G. Exhibits**

24 Any Exhibits to the Plan not filed herewith will be Filed no later than Ten (10) days prior to
25 the commencement of the Confirmation Hearing. The Exhibits will not be served with the Plan,
26 but rather, copies of all such exhibits will be available upon request to the Debtor's counsel.
27
28

1 **H. No Admission**

2 Except as specifically provided in the Plan, nothing contained in the Plan shall be deemed
3 or construed in any way as an admission by the Debtor or the Estate with respect to any matter set
4 forth in the Plan, including the amount or allowability of any Claim, or the value of any property of
5 the Estates.

6
7 **I. General Authority**

8 The Debtor and the 3 Trust shall execute such documents and take such other actions as are
9 necessary to effectuate the transactions provided for in the Plan, including, but not limited to the
10 authority to contract for employment services for administrative purposes.

11 **J. Dissolution of Committee**

12 On the Effective Date, the Committee of Unsecured Creditors shall be disbanded and its
13 members shall be released and discharged from all rights and duties arising from, or related to the
14 Chapter 11 Case.

15
16 **K. Binding Effect**

17 The Plan and all rights and obligations thereunder shall be binding upon and inure to the
18 benefit of the Debtor, the Committee, the Trust, the holders of Claims and Interests and their
19 respective successors and assigns.

20
21 **L. Governing Law**

22 Unless a rule of law or procedure is supplied by federal law (including Bankruptcy code
23 and Bankruptcy Rules) or by way of an express choice of law provision in any agreement, contract,
24 document or instrument provided for or executed in connection with the Plan, the rights and
25 obligations arising under the Plan and any agreement, contract, document or instrument provided
26 for or executed in connection with the Plan, shall be governed by, and construed and enforced in
27 accordance with, the laws of the State of Nevada, without giving effect to the principles of conflict
28

1 of laws thereof.

2 **M. Headings**

3 The headings used in the Plan are inserted for convenience only and neither constitute a
4 portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

5 **N. No Waiver**

6 The failure of Debtor or any other entity to object to any Claim or Interest for purposes of
7 voting shall not be deemed to be a waiver of any entity's right, including the Debtor or the
8 Trustee's right to object to or examine such Claim or Interest, in whole or in part.

9 **O. Severability of Plan Provisions**

10 If, prior to the Confirmation Date, any term or provision of the Plan is held by the Court to
11 be illegal, impermissible, invalid, void or unenforceable, or otherwise to constitute grounds for
12 denying confirmation of the Plan, the Court shall, with the consent of the Debtor, have the power to
13 interpret, modify or delete such term or provision (or portions thereof) to make it valid or
14 enforceable to the maximum extent practicable, consistent with the original purpose of the term or
15 provision held to be invalid, void or unenforceable, and such term or provision shall then be
16 operative as interpreted, modified or deleted, Notwithstanding any such interpretation,
17 modification or deletion, the remainder of the terms and provisions of the Plan shall in no way be
18 affected, impaired or invalidated by such interpretation, modification or deletion.

19 **P. Post-Confirmation Status Report**

20 Within ninety (90) days of the Effective Date, the Trustee shall file a status report setting
21 forth what progress has been made towards consummation of the confirmed Plan. The status report
22 shall be served on the US Trustee, the Debtor, counsel for the Debtor and any Entities who have
23 filed a request for such reports with the Court.
24
25
26
27
28

1 **Q. Payment of US Trustee Fees**

2 Debtor and, if necessary the Trustee, shall pay all fees payable to the Office of the United
3 States Trustee pursuant to 28 U.S.C. Section 589a.

4 **R. Final Decree**

5 Once the Estate has been fully administered, as referred to in Bankruptcy Rule 3022, the
6 Debtor shall file a final report and account of all receipts and disbursements, and serve that report
7 on the US Trustee and other entities entitled to service under any applicable law. Any such final
8 report shall include a request that the Court enter a Final Decree in the Chapter 11 Case of the
9 Debtor.
10

11 **S. Revocation, Withdrawal, Cram-Down or Non-Consummation**

12 The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the
13 Confirmation Date and to file subsequent plans. If the Debtor revokes or withdraws the Plan, or if
14 Confirmation or consummation does not occur, then (1) the Plan shall be null and void in all
15 respects, (2) any settlement or compromise embodied in the Plan rejection or assumption of any
16 executory contracts or leases affected by the Plan and any document or agreement executed
17 pursuant to the Plan shall be deemed null and void and (3) nothing contained in the Plan and no
18 acts taken in preparation for consummation of the Plan shall (A) constitute or be deemed to
19 constitute a waiver or release of any Claims by or against the Debtor or any other Entity, (B)
20 prejudice in any manner the rights of the Debtor or any Entity in any further proceedings involving
21 the Debtor, or (C) constitute an admission of any sort by the Debtor.
22

23
24 Notwithstanding the above, the Asset Sale shall proceed.

25 **T. Notice to Certain Parties**

26 All notices and documents to be effective for the following parties shall be in writing
27 (including email or facsimile transmission) and, unless otherwise expressly provided herein, shall
28

1 be deemed to have been duly given or made when actually delivered or, in the case of notice by
2 facsimile transmission, when received and telephonically confirmed, addressed as follows:

3
4 To Debtor:

American Pacific Financial Corporation
22365 Barton Road, Ste 210 _____
Grand Terrace, CA 92313 _____
Attention: Larry R. Polhill _____
Email: lpolhill@ampac.com _____
Facsimile: (909) 387-0810 _____

7 With copies to:

McDonald Carano Wilson
100 West Liberty Street, 10th Floor
P.O. Box 2670
Reno, NV 89505-2670
Attention: Kaaran E. Thomas
Email: kthomas@mcdonaldcarano.com
Facsimile: (775) 788-2020

11 To the DIP Lender:

12 _____
13 _____
14 Attention: _____
Email: _____
Facsimile: _____

15 To the Official Committee of Unsecured
16 Creditors:

17 _____
18 _____
19 Email: _____
Facsimile: _____

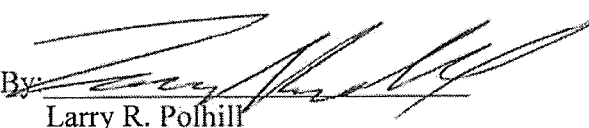
20 **ARTICLE XII.**

21 **REQUEST FOR CONFIRMATION**

22 The Debtor hereby requests that the Court confirm the Plan pursuant to Bankruptcy Code
23 Section 1129(a) or, if necessary, pursuant to Bankruptcy Code Section 1129 (b).

24 DATED this 1st day of April, 2011.

25 AMERICAN PACIFIC FINANCIAL
26 CORPORATION

27 By: 
28 Larry R. Polhill
Its: President

1
2 MCDONALD CARANO WILSON LLP
3

4 By: /s/ Kaaran E. Thomas

5 Kaaran E. Thomas
6 Nevada Bar No. 7193
7 100 West Liberty St., 10th Floor
8 P.O. Box 2670
9 Reno, Nevada 89505-2670
10 Phone: (775) 788-2000

11 Attorney for Debtor and Debtor in Possession
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